

DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

CORRECTED
NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth in section 117 of the Continuing Care Retirement Communities Act of 2004, effective April 6, 2005 (D.C. Law 15-270; D.C. Official Code § 44-151.01 *et seq.*) (2005 Supp.) ("Act"), hereby gives notice of the adoption of a new Chapter 82, entitled Continuing Care Retirement Communities, to Title 26 (Insurance) of the D.C. Municipal Regulations. The purpose of this new chapter is to implement the Act by establishing the licensing process for continuing care retirement communities; establishing the information to be included in a financial forecast; establishing standards for revocation of a start-up certificate, preliminary certificate, permanent license, and restricted or conditional license; and establishing standards for the Commissioner to determine whether a continuing care retirement community is insolvent or in a hazardous financial condition. Notice of Proposed Rulemaking was published on December 2, 2005, at 52 DCR 10572. No comments were received concerning the proposed rules. An erroneous Notice of Final Rulemaking was published on February 24, 2006, at 53 DCR 1399. **This Notice of Final Rulemaking corrects and replaces the Notice of Final Rulemaking published on February 24, 2006.**

Title 26 (Insurance) of the D.C. Municipal Regulations is amended by adding a new Chapter 82, Continuing Care Retirement Communities, to read as follows:

Chapter 82 CONTINUING CARE RETIREMENT COMMUNITIES

8200 LICENSURE PROCEDURES

8200.1 An individual or business entity seeking to develop, construct, operate, purchase, or expand a continuing care facility ("applicant") shall apply for a license in accordance with the procedures contained in this section. All forms referred to in this section and following sections may be found on the Department of Insurance, Securities, and Banking website at disb.dc.gov.

8200.2 For new or development stage facilities, the applicant shall submit the following items to the Commissioner for review:

- (a) The applicant's name, address, and telephone number;
- (b) A copy of a non-binding reservation agreement form (a nonbinding agreement between a continuing care facility and future resident (or his or her representative) to reserve a unit in the continuing care facility);

- (c) An escrow agreement to establish an escrow account in compliance with the requirements of section 109 of the Act;
- (d) A narrative describing the facility, its mode of operation, and its location; and
- (e) Any advertising materials to be used.

8200.3

After submitting all of the items described in subsection 8200.2, the applicant for a new or development stage facility may:

- (a) Disseminate materials describing the intent to develop a continuing care facility; and
- (b) Enter into fully refundable non-binding reservation agreements for up to one thousand dollars (\$1,000). All funds received shall be escrowed with a bank, trust company, or other independent person or entity agreed upon by the provider and the resident.

8200.4

To obtain a Start-Up Certificate, an applicant for a new or development stage facility or provider shall have submitted the items described in section 8200.2 and shall submit the following to the Commissioner for review:

- (a) An application for licensure, accompanied by a five hundred dollar (\$500) filing fee;
- (b) A disclosure statement as required by section 105 of the Act;
- (c) A copy of a binding reservation agreement form or resident agreement form; and
- (d) A market feasibility study.

8200.5

Upon issuance of a Start-Up Certificate, the applicant or provider may:

- (a) Enter into binding reservation agreements or resident agreements;
- (b) Accept entrance fees and entrance fee deposits over one thousand dollars (\$1,000). Any funds received shall be escrowed and shall be released only with the approval of the Commissioner;
- (c) Begin site preparation work; and
- (d) Construct model units for marketing.

- 8200.6 To obtain a Preliminary Certificate, an applicant or provider must hold a valid Start-Up Certificate and shall submit the following to the Commissioner for review:
- (a) An explanation of any material differences between actual costs and projected costs contained in the Start-Up Certificate submission, except that an explanation is not required for existing continuing care facilities that are seeking to expand;
 - (b) An updated disclosure statement;
 - (c) Current interim financial statements; and
 - (d) Confirmation of signed reservation agreements for at least 50 percent (50%) of any new units and confirmation that those units were reserved through a deposit equal to at least 10 percent (10%) of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two (2) months for continuing care facilities that have no entrance fee.
- 8200.7 Upon issuance of a Preliminary Certificate, an applicant or provider may:
- (a) Purchase or construct a continuing care facility;
 - (b) Renovate or develop structure(s) not already licensed as a continuing care facility; or
 - (c) Expand an existing continuing care facility in excess of ten percent (10%) of the current number of available independent living units or available health related units/beds.
- 8200.8 To obtain a Permanent License, an applicant or provider must hold a valid Preliminary Certificate and shall submit the following to the Commissioner for review at least sixty (60) days before the opening of the continuing care facility:
- (a) An updated application for licensure;
 - (b) An updated disclosure statement;
 - (c) Confirmation of signed reservation agreements for new units required by the continuing care facility to break even and confirmation that those units were reserved by a deposit equal to at least ten percent (10%) of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two (2) months for continuing care facilities that have no entrance fee;

- (d) All reports as required by an approved accrediting organization for the continuing care facility to maintain its accreditation; and
 - (e) A summary of the report of an actuary estimating the capacity of the applicant or provider to meet its contractual obligation to the residents.
- 8200.9 Upon issuance of a Permanent License and satisfaction of all other legal requirements, the applicant or provider may:
 - (a) Open the continuing care facility; and
 - (b) Provide continuing care services.
- 8200.10 If all other licensing requirements are met, the Commissioner may, in lieu of denying the issuance of a Permanent License, issue a Restricted or Conditional License to an applicant if one (1) or more of the following conditions exist:
 - (a) A hazardous financial condition; or
 - (b) Occupancy at the facility, or the number of executed agreements for new units at the facility, is below the level at which the facility would break even.
- 8200.11 Upon issuance of a Restricted or Conditional License, a provider may operate the facility under the conditions or restrictions established by the Commissioner until such time as the Commissioner alters the conditions or restrictions or issues a Permanent License.
- 8200.12 Upon issuance of a Restricted or Conditional License, a provider shall file with the Commissioner each quarter a financial statement and an occupancy report, both due no later than forty-five (45) days following the end of each fiscal quarter.
- 8200.13 All continuing care facilities operating in the District of Columbia on the effective date of these regulations shall submit an application for a Permanent License with a filing fee of five hundred dollars (\$500) attached within one hundred twenty (120) days after the effective date of these regulations. An existing continuing care facility may apply for a Permanent License without first obtaining a Start-Up Certificate or Preliminary Certificate. An application for a Permanent License under this subsection shall be accompanied by the following:
 - (1) Disclosure statement;
 - (2) Financial statements;
 - (3) Escrow agreement;

- (4) Narrative describing the facility, its mode of operation, and its location;
- (5) Advertising materials that are used or to be used; and
- (6) Confirmation of signed agreements for units in the continuing care facility to break even and confirmation that those units were reserved by a deposit equal to at least ten percent (10%) of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two (2) months for continuing care facilities that have no entrance fee.

8200.14 A continuing care facility that has applied for a Permanent License pursuant to subsection 8200.13 may continue to operate until the Commissioner acts upon the application for a Permanent License. If the application is denied, the applicant shall thereafter be treated as a continuing care facility whose license or certificate of authority has been revoked.

**8201 REVOCATION, SUSPENSION, OR DENIAL OF LICENSE;
ADMINISTRATIVE PENALTIES**

8201.1 The suspension, revocation, denial, and administrative penalty processes provided in this section shall apply to a Start-Up Certificate, Preliminary Certificate, Permanent License, and Restricted or Conditional License.

8201.2 The suspension or revocation of a license or certificate of authority, the denial of an application for a license or certificate of authority, or the imposition of an administrative penalty shall be by written order and shall be sent to the continuing care facility, provider, or applicant by certified or registered mail. The written order shall state the grounds, charges, or conduct on which suspension, revocation, denial, or imposition of administrative penalty is based. A continuing care facility, provider, or applicant may in writing request a hearing within thirty (30) days from the date of the mailing of the order. If no written request is made, the order shall be final upon expiration of the thirty (30) day period.

8201.3 If a continuing care facility, provider, or applicant requests a hearing, the Commissioner shall issue a written notice of hearing and send it to the continuing care facility, provider, or applicant by certified or registered mail. The notice shall include a specific date, time, and place for the hearing.

8201.4 If a hearing is requested, the Commissioner or his or her designee shall be in attendance and shall conduct the proceedings. The provisions of the District of Columbia Administrative Procedure Act, approved October 21, 1968, (82 Stat. 1204; D.C. Official Code § 1-1501 *et seq.*) shall apply to proceedings under this subsection.

- 8201.5 After a hearing, or upon failure of the continuing care facility, provider, or applicant to appear at a hearing, the Commissioner shall issue a decision and order that includes findings of fact and conclusions of law. The Commissioner's decision and order shall be sent to the continuing care facility, provider, or applicant by certified mail. The Commissioner's decision and order shall be subject to appeal to the District of Columbia Court of Appeals.
- 8201.6 If the license or certificate of authority of a continuing care facility, provider, or applicant is revoked, such entity shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs in the District and shall conduct no further business in the District except as may be essential to the orderly conclusion of its affairs in the District. The continuing care facility, provider, or applicant shall engage in no further advertising or solicitation in the District. The rehabilitation and liquidation provisions of section 111 of the Act shall be implemented unless the Commissioner, by written order, permits further operation of the continuing care facility as the Commissioner may find to be in the best interest of residents of a continuing care facility, to the end that residents will be afforded the greatest practical opportunity to obtain continuing care services.
- 8202 SALE OR TRANSFER OF OWNERSHIP**
- The sale or transfer of ownership process in section 104 of the Act shall apply to the holder of a Start-Up Certificate, Preliminary Certificate, Permanent License, and Restricted or Conditional License.
- 8203 STANDARDIZED DISCLOSURE STATEMENT FORMAT**
- All disclosure statements shall be prepared following a standardized format issued by the Commissioner, which the Commissioner may update as necessary.
- 8204 HEALTH AND FINANCIAL CONDITIONS FOR ACCEPTANCE**
- The health and financial conditions for acceptance as a resident shall appear within the disclosure statement. The disclosure statement shall also include any conditions related to the acceptance conditions required by the provider or continuing care facility, such as age, ability to move or communicate, minimum assistance levels necessary to perform daily activities, prepared wills, and ability to pay under specified conditions.
- 8205 FINANCIAL STATEMENTS AND COMPILED FIVE -YEAR FORECASTS**
- 8205.1 Certified financial statements, as required by section 105(a)(10) of the Act, and compiled five (5) year forecasts, as required by section 105(a)(12) of the Act,

shall be prepared by an independent certified public accountant and shall be of the provider's corporation or other legal entity that owns the continuing care facility. The Commissioner may require the provider to supply supplementary financial data or other appropriate disclosure on individual continuing care facilities if a corporation or other legal entity owns various continuing care facilities or is engaged in various enterprises.

8205.2 The Commissioner may accept all or part of the report and supporting documentation of an approved accrediting organization acceptable to the Commissioner to satisfy the review requirements under the Act; provided, that such acceptance shall not preclude the Commissioner from performing the examination function.

8206 COMPILED FIVE-YEAR FORECAST

8206.1 The compiled five (5) year forecast shall consist of the following:

- (a) A balance sheet including, at a minimum, individual categories or line items that sum into the following subtotals:
 - (1) Current assets;
 - (2) Restricted assets, including a line item for operating reserve assets;
 - (3) Fixed assets, including property, plant, and equipment;
 - (4) Total assets;
 - (5) Current liabilities;
 - (6) Long-term debt;
 - (7) Total liabilities;
 - (8) Overdue revenue – refundable;
 - (9) Deferred revenue – nonrefundable;
 - (10) Equity or fund balance – unrestricted; and
 - (11) Equity or fund balance – restricted;
- (b) A statement of operations including, at a minimum, the following categories or line items:
 - (1) Monthly fee revenues;

- (2) Amortization of entrance fees;
 - (3) Health care revenues;
 - (4) Investment/interest income;
 - (5) Contributions/gifts;
 - (6) Health care expenses;
 - (7) Operation expenses, consisting of at least maintenance, laundry, and housekeeping;
 - (8) Dietary expenses;
 - (9) Administrative expenses;
 - (10) Interest expenses; and
 - (11) Depreciation;
- (c) A statement of cash flows; and
- (d) A narrative detailing all significant assumptions.

8207

**INFORMATION REQUIRED OF PROPOSED OR DEVELOPMENT
STAGE FACILITIES APPLICABLE TO FACILITIES SEEKING TO
EXPAND**

The Commissioner may require all or part of the information listed in section 105(a)(14) of the Act be provided by existing continuing care facilities that apply to expand their facilities.

8208

INSOLVENCY OR HAZARDOUS FINANCIAL CONDITION

8208.1

The Commissioner may deem a provider or continuing care facility that has a negative fund balance to be insolvent or in imminent danger of becoming insolvent if any of the following hazardous financial condition standards or factors are applicable or present:

- (1) There are findings or conditions reported in the provider's or continuing care facility's financial statements that the Commissioner determines to be adverse to the financial stability of the provider or continuing care facility;
- (2) The current or projected ratios of total assets, including required reserve levels, to total liabilities indicate an impairment or deterioration of the

provider's or continuing care facility's operations or equity or demonstrate a trend that could lead to an impairment or a deterioration of the provider's or continuing care facility's operations, working capital, or equity;

- (3) The current or projected ratios of current assets to current liabilities indicate an impairment or deterioration of the provider's or continuing care facility's operations, working capital, or equity or demonstrate a trend that could lead to an impairment or a deterioration of the provider's or continuing care facility's operations, working capital, or equity;
- (4) The provider or continuing care facility is unable to perform normal daily activities and meet its obligations as they become due, considering the provider's or continuing care facility's current or projected cash flow and liquidity position;
- (5) The provider's or continuing care facility's operating losses for the past year or projected operating losses are of such magnitude as to jeopardize normal daily activities or continued operations of the provider or continuing care facility;
- (6) The insolvency of an affiliated provider or continuing care facility or other affiliated person results in legal liability of the provider or continuing care facility for payments and expenses of such magnitude as to jeopardize the provider's or continuing care facility's ability to meet its obligations as they become due, without the substantial disposition of assets outside the ordinary course of business, restructuring of debt, or externally forced revisions of its operations;
- (7) The provider or continuing care facility has receivables that are more than ninety (90) days old;
- (8) The insolvency is not temporary and the provider or continuing care facility cannot demonstrate that the insolvency will be materially reduced or eliminated;
- (9) There is an adverse effect on the provider or continuing care facility of reporting entrance fees as deferred revenues, with consideration given to all reporting requirements required under generally accepted accounting principles and the ultimate net income component of those revenues; and
- (10) A start-up provider or continuing care facility or any operational provider or continuing care facility undergoing plant expansion or refinancing of its debt has a financial condition as a result of such action that could seriously jeopardize its present or future operations.

8208.2 The provider or continuing care facility shall prepare a plan to address and correct any condition that has led to a determination of insolvency or imminent danger of insolvency by the Commissioner. The plan must be presented to the Commissioner within ninety (90) days after the date of the determination of insolvency or imminent danger of insolvency. If the plan is disapproved by the Commissioner, the plan does not correct the condition leading to the Commissioner's determination of insolvency, or the provider's or continuing care facility's hazardous condition is such that it cannot be significantly corrected or eliminated, the Commissioner may take action pursuant to sections 103 and 111 of the Act.

8209 BOOKS AND RECORDS

8209.1 Each provider shall maintain its books and records in the District of Columbia and shall not remove from the District of Columbia its books and records without the permission of the Commissioner.

8209.2 Each provider shall maintain its books and records for three (3) years.

8299 DEFINITIONS

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed:

Act - the Continuing Care Retirement Communities Act of 2004, effective April 6, 2005 (D.C. Law 15-270; D.C. Official Code § 44-151.01 *et seq.*) (2005 Supp.)

Break even - to have sufficient executed resident agreements to assure the financial stability of a continuing care facility and to have projected revenues that are at least equal to projected expenses.

Commissioner - the Commissioner of the Department of Insurance, Securities, and Banking.

Continuing care facility - a building, or complex of buildings under common management at one (1) or more sites where continuing care services are provided.

Continuing care services - the continuum of care, ranging from independent living to assisted living to nursing home care, provided pursuant to a contract for the life of the individual purchasing the services or for a period of not less than one (1) year.

Development stage facilities - the beginning of the legal commitment to develop a continuing care facility up to the point when residents are admitted to reside in the facility.

Disclosure statement - a document containing all the information required by section 105 of the Act.

Entrance fee - a payment that assures a resident a place in a continuing care facility for a term of at least one (1) year or life.

Health related services - domiciliary (rest home) care or care provided at homes for the aged, skilled or intermediate nursing, nursing home or rest home admission, or priority admission into a facility, unit, or bed providing any of the above-named services.

Health units/beds - beds in the health center (also known as the nursing home) component of the continuing care facility that are occupied by a resident having been referred to that level of care by a hospital (as on discharge) or by a physician.

Independent living units - a room, apartment, cottage, or other area within a continuing care facility set aside for the exclusive use or control of one (1) or more identified residents who do not need specialized health care services beyond general preventative health care.

Negative fund balance - a financial position of a provider or continuing care facility in which the assets of a provider or continuing care facility do not exceed its liabilities, under generally accepted accounting principles.

Provider - the promoter, developer, or owner, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, whether or not operated for profit, or any other person, that solicits or undertakes to provide continuing care services.